

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations.)

(Campbellsville and Mannsville,)
Kentucky))

MM Docket No. 92-233
RM-8078

To: Mass Media Bureau (Policy & Rules)

REPLY COMMENTS OF PATRICIA RODGERS

Patricia Rodgers, permittee of FM station WVLC, Campbellsville, Kentucky, and petitioner in the above-captioned proceeding, respectfully submits her reply comments to the "Comments and Counter Proposal in response to Notice of Proposed Rule Making", filed by Heartland Communications, Inc. ("Heartland") on December 28, 1992. In support thereof, the following is shown.

In this rule making proceeding, Rodgers seeks to change her station from a Class A facility licensed to Campbellsville to a Class C3 station licensed to Mannsville. This change supports the goals of Section 307(b) of the Communications Act, as it gives Mannsville, a community of 2,145 people, its first local transmission service, and provides a new reception service to many others. The Commission found merit in Rodgers' proposal in its Notice of Proposed Rule Making ("NPRM"), DA 92-1323, released November 5, 1992.

Heartland was the only party besides Rodgers to file

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comments to the NPRM. At present, Heartland has a radio broadcasting monopoly in Campbellsville, as it is the licensee of the only stations presently operating there, WTCO(AM) and WCKQ(FM), a Class C3 allotment. In addition, Heartland is the permittee of WTCO-FM, Russell Springs, Kentucky, located about 25 miles from Campbellsville. WTCO-FM is a 6 kW Class A facility. Clearly, WTCO-FM can be heard throughout much of the area served by WCKQ, giving Heartland significant control of the radio market.

In its counterproposal, Heartland proposes a different change for WVLC. Rather than permit Rodgers to upgrade WVLC to Class C3 and serve a community of significant size which currently lacks its own station, Heartland would require Rodgers to move to another community completely, remaining a Class A facility. It is clear from Heartland's counterproposal that Heartland is mostly concerned over the effect that WVLC's operation as a Class C3 station might have on its control of the radio market. As a Class A facility, WVLC would have difficulty competing with the entrenched positions of Heartland's stations. With its upgrade to Class C3, WVLC would become a regional facility, better able to serve the public interest by giving the listening public better programming and a wider choice of stations.

Heartland asserts that Mannsville is not a community, as defined by the Commission. The sole bases for Heartland's claim is that Mannsville is not incorporated, is not a Census

Designated Place, and is not listed in the index to the Rand McNally Road Atlas. However, Heartland omits any discussion of the Commission's criteria for community. The Commission generally recognizes for licensing purposes, any population grouping in which the evidence indicates that the residents coalesce and conceive of themselves as a community. In Mountain Pass and Yermo, CA, 45 RR 2d 58 (Broadcast Bur. 1979), the Commission found a community from a separate Zip Code and a road sign identifying the area as a community. In Beacon Broadcasting Co., 2 FCC Rcd 3469 (1987), affirmed sub nom. New South Broadcasting Corp. v FCC, 897 F. 2d 867 (D.C. Cir. 1989), the Commission held that Fairforest, SC was a community for licensing purposes, despite having no local government of its own, for it was a "'geographically identifiable population grouping' and hence a community of purposes of Section 307(b)." 2 FCC Rcd at 3471.¹

In her petition for rule making which initiated this proceeding, Rodgers demonstrated that Mannsville fully qualified as a community under the Commission's definition. That showing is incorporated herein by reference. Heartland has not disputed any of the information about Mannsville which Rodgers presented, such as the schools, churches, and business which include Mannsville in their name, or Mannsville's own postal Zip code.

¹ Unlike Fairforest, which abuts and is wholly dependent upon a much larger city (Spartenburg, SC), Mannsville is a separate and distinct community.

Heartland's argument against Commission recognition of Mannsville as a separate community does not rebut any of Rodgers' showing. Hence, it is clear that Mannsville is a community in its own right, under Commission policy and precedent, and is entitled to its own local radio station.

Heartland's counterproposal is not permissible under Commission policy; it must be summarily dismissed. Rodgers is seeking an upgrade on her present frequency, with a change in community of license to Mannsville. An acceptable counterproposal must protect WVLC's present construction permit. See, Letter to Jerrold Miller, Esquire, dated September 6, 1989, attached hereto. As shown by the spacing study attached to Heartland's counterproposal, an allotment of Channel 260A to Brownsville is short-spaced to WVLC's present permit. On this basis alone, Heartland's counterproposal must be dismissed.

Moreover, it is against Commission policy to compel a permittee to change either its community of license or its transmitter site without its approval. Heartland cites no precedent for its proposal to require WVLC to move to a completely new community. Rodgers applied for and obtained a construction permit for a station at Campbellsville. She is willing to change the station's community of license only to Mannsville, and only if the facility is upgraded to Class C3. She is not willing to relinquish her present permit for a Class A station at any other community. Heartland's counterproposal, which would require such a substitution, violates


Commission policy.

Heartland would require Rodgers to change her transmitter site. This, too, is unacceptable without the written permission of the permittee. Letter to Jerrold Miller, supra, and Waupun, Mayville and New Holstein, Wisconsin, 3 FCC Rcd 3163 (1988). Rodgers vehemently opposes changing her transmitter site to the site specified by Heartland or to any site other than one she selects. There is no precedent for requiring her to accede to Heartland's wishes. For this reason as well, Heartland's counterproposal is unacceptable.²

In sum, Heartland's counterproposal violates Commission policy and requirements. It must be dismissed, and Rodgers' request to upgrade WVLC and change its community of license should be granted forthwith.

Respectfully submitted,

PATRICIA RODGERS

By 
Jerrold Miller
Her Attorney

January 12, 1993

Miller and Miller, P.C.
P. O. Box 33003
Washington, D.C. 20033

² To the extent that Brownsville is deserving of its own station, Rodgers notes that Channel 227A may be available at the coordinates specified by Heartland, depending on the outcome of MM Docket 90-535. See the attached spacing study, which shows that a pending counterproposal in that proceeding is the only impediment to use of Channel 227A at Brownsville.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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IN REPLY REFER TO:

Jerrold Miller, Esquire
Miller & Fields, P.C.
P.O. Box 33003
Washington, D.C. 20033

Dear Mr. Miller:

This in response to the petition for rule making you filed on behalf of Sauk Broadcasting Corporation, licensee of Station WNFM(FM), Channel 285A at Reedsburg, Wisconsin, requesting the substitution of Channel 286C3 for Channel 285A at Reedsburg, and modification of Station WNFM(FM)'s license accordingly. Your proposal also suggests channel substitutions at Waunakee and Columbus, Wisconsin, in order to accomplish the upgrade at Reedsburg.

Our engineering analysis confirms that the allotment of Channel 286C3 to Reedsburg cannot be made in compliance with the Commission's technical requirements unless the requested channel changes are made at Waunakee and Columbus. However, we find that the channel you have suggested at Columbus does not meet the spacing requirements to the construction permit for Station KATF(FM), Channel 225C at Dubuque, Iowa. Although you state that the construction permit for the full class C facilities at Dubuque has expired, our records indicate the construction permit, which expired April 20, 1989, is still outstanding and has not been cancelled. Therefore, the construction permit is afforded protection against a new petition for rule making until it has been cancelled and no longer subject to reinstatement. Accordingly, we shall not entertain a proposal which violates the Commission's minimum distance separation requirements to the station's licensed and construction permit sites.

In addition, we find that your proposal is defective since you failed to obtain, and submit with your proposal, a signed statement from the permittee at Columbus stating its willingness to relocate its transmitter site in conjunction with your upgrade. We will not entertain a proposal requiring a station to change its transmitter site absent such a statement by the permittee or licensee. See, Waupun, Mayville and New Holstein, Wisconsin, 3 FCC Rcd 3163 (1988).

In view of the foregoing we find your request is unacceptable at this time. However, you may resubmit your petition at a later date if the construction permit for Station KATF (FM) is cancelled.

Therefore, your request is not acceptable for rule making and all copies are herewith returned.

Sincerely,

A handwritten signature in dark ink, appearing to read 'K. A. Kensinger', is written over the typed name.

Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Enclosure

FM Spacing study

Title: BROWNSVILLE, KY
Channel 227A (93.3 MHz)
Database: DW 01/07/93

Latitude: 37-17-35
Longitude: 86-17-00
Safety zone: 30 km

Call	Auth	Licensee name	Chan	ERP-kW	Latitude	Br-to	Dist.	Req.
City of License	St	FCC File no.	Freq	EAH-m	Longitude	-from	(km)	(km)
WTCO-FM CP	HEARTLAND COMMUNICATIONS	224A	6DA	37-04-41	103.3	101.4	31	
RUSSELL SPRINGS	KY BMPH-920507IF	92.7	100	85-10-26	284.0	70.36	CLEAR	
CP Granted 09/03/92 per FCC release #21467 dated 09/15/92; Was WQEG 11/13/92 p er FCC release #194 dated 11/06/92								
WZEZ	LIC SOUTH CENTRAL COMM CORP	225C	100	36-07-14	205.3	143.8	95	
NASHVILLE	TN BLH-861204KB	92.9	321	86-58-07	24.9	48.80	CLEAR	
NEW	APP KENTUCKIANA RADIO PARTNE	226A	3	38-16-11	18.2	114.3	72	
CLARKSVILLE	IN BPH-890905MO	93.1	100	85-52-23	198.5	42.27	CLEAR	
Accepted per FCC release #NA-123 dated 05/04/90; Hearing DOC-91-98, adopted 03 /28/91, released 05/09/91								
RM	RULE MAKING PETITION	227A		37-02-45	194.7	28.37	115	
BOWLING GREEN	KY DOC-90-535	93.3		86-21-53	14.7	-86.6	SHORT	
Released 02/15/91; DOC-90-535; COUNTERPROPOSAL TO DOC-90-535								
WKYQ	CP BRISTOL BROADCASTING CO,	227C1	100	37-02-56	263.2	208.8	200	
PADUCAH	KY BPH-901029IE	93.3	279	88-36-52	81.8	8.801	CLOSE	
CP Granted 08/21/92 per FCC release #21456 dated 08/31/92; Affiliated with WKY X(AM)								
WKYQ	LIC BRISTOL BROADCASTING COM	227C1	89	37-00-53	262.2	209.2	200	
PADUCAH	KY BLH-810701AQ	93.3	110	88-36-46	80.8	9.226	CLOSE	
Affiliated with WKYX(AM)								
WMNG-FM LIC	MEADE COUNTY BCG CO, INC	228A	6	37-59-05	8.2	77.58	72	
BRANDENBURG	KY BMLH-900515KH	93.5	88	86-09-24	188.3	5.576	CLOSE	
License Granted 02/22/91 per FCC release #21061 dated 03/01/91; Affiliated wit h WMNG(AM)								
WAIN-FM LIC	TRICOUNTY RADIO BCG CORP	228A	4.60	37-06-36	102.6	91.51	72	
COLUMBIA	KY BMLH-900117KC	93.5	55	85-16-42	283.2	19.51	CLEAR	
License Granted 11/20/90 per FCC release #20997 dated 11/28/90; Affiliated wit h WAIN(AM)								
WAIN-FM CP	TRICOUNTY RADIO BCG CORP	228A	3	37-06-25	102.8	91.61	72	
COLUMBIA	KY BPH-820310AH	93.5	91	85-16-41	283.4	19.61	CLEAR	
Affiliated with WAIN(AM)								
NEW	APP JOEL R. UPTON	229C3	25	36-18-53	148.2	127.5	42	
BAXTER	TN	93.7	100	85-32-00	328.7	85.54	CLEAR	
Received per FCC release #15301 dated 07/09/92								
WKTG	LIC SOUND BROADCASTERS INCOR	230C2	27.1	37-21-05	273.8	107.2	55	
MADISONVILLE	KY	93.9	90	87-29-25	93.1	52.18	CLEAR	
Affiliated with WFMW(AM)								

>> End of channel 226A study <<

MILLER & FIELDS
WASHINGTON, D.C.

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January 7, 1993

FM Spacing study

Title: BROWNSVILLE, KY
Channel 227A (93.3 MHz)

Latitude: 37-17-35
Longitude: 86-17-00

Call	Auth	Licensee name	Chan	ERP-kW	Latitude	Br-to	Dist.	Req.
City of License	St	FCC File no.	Freq	EAH-m	Longitude	-from	(km)	(km)
ALLOC		SITE RESTRICTION 4.1 MI	280A		37-09-57	257.8	66.14	10
DRAKESBORO	KY	DOC-87-34	103.9		87-00-41	77.4	56.14	CLEAR

Filing window 01/19-02/20/90 **CLOSED** ; GRANTED EFF 1/18/90

WCKQ	LIC	HEARTLAND COMMUNICATIONS	281A	2.25	37-20-07	86.4	80.58	10
CAMPBELLSVILLE	KY	BLH-911025KA	104.1	114	85-22-33	266.9	70.58	CLEAR

Deletion proposed; License Granted 06/10/92 per FCC release #21401 dated 06/15/92; ORDERED TO 281C3; Ant: Phelps Dodge CFM-LP-3; Affiliated with WTCO(AM)

>> End of channel 227A study <<

CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of January, 1993
a copy of the foregoing document was placed in the United States mail,
first class postage prepaid, addressed to the following:

Dawn M. Sciarrino, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-9006

Robin W. Green